



International Civil Aviation Organization

WORKING PAPER

A40-WP/550

EX/236

13/9/19

Revision No. 1

19/9/19

(Information paper)

English only

ASSEMBLY — 40TH SESSION

EXECUTIVE COMMITTEE

Agenda Item 14: Facilitation Programmes

PASSENGER NAME RECORD DATA IN SECURITY AND FACILITATION

(Presented by United States)

EXECUTIVE SUMMARY

The promulgation of an ICAO Standard(s) on the collection, use and analysis of Passenger Name Record (PNR) data is needed to further strengthen States' ability to identify risks to deter terrorist travel, as called for in United Nations Security Council Resolution (UNSCR) 2396, and enhance global security. Per the recommendations of the Second High-level Conference on Aviation Security (HLCAS/2), the International Civil Aviation Organization (ICAO) established a PNR Task Force in 2019 to review the existing Standards and Recommended Practices for PNR contained in Annex 9 of the Chicago Convention and develop proposals for Standard(s) for PNR use in border and aviation security, in accordance with the obligations of UNSCR 2396. PNR Task Force proposals will be considered by the Air Transport Committee (ATC) in October 2019. The Task Force's proposals reflect best practices in the use of this data for law enforcement and counterterrorism purposes, which includes retention of PNR data – with appropriate privacy protections – after a traveller's departure from the destination country. While the definition of PNR and the rationale behind PNR collection are contained in ICAO Document 9944 - *Guidelines on Passenger Name Record Data*, there are no substantive provisions that address PNR's use for border and aviation security. The United States believes an ICAO PNR Standard(s) and accompanying Recommended Practices should explicitly provide for PNR use to detect and deter terrorist and criminal travel. In order to gain the most benefit from collection of PNR for purposes of border and aviation security, the Standard(s) must explicitly articulate the security-related aims, as well as retention requirements, as principles. PNR use and analysis are essential to deter terrorist and criminal travel and expanding global use of this information is a global counterterrorism priority and obligation. A strong ICAO PNR Standard(s) that includes appropriate retention principles will strengthen global border security and safeguard international civil aviation against terrorist and criminal travel and acts of unlawful interference, in line with the goals of UNSCR 2396.

<i>Strategic Objectives:</i>	This Information Paper relates to Strategic Objectives – <i>Security and Facilitation</i>
<i>Financial implications:</i>	The activities referred to in this Information Paper will be undertaken subject to available resources.
<i>References:</i>	Document 9944 - <i>Guidelines on Passenger Name Record Data</i> HLCAS/2 WP 29 PNR Standard(s)

1. INTRODUCTION

1.1 United Nations Security Council Resolution (UNSCR) 2396, adopted unanimously in December 2017 with 66 co-sponsors, created new global obligations and provisions for Member States to deter terrorist travel and address the problem of foreign terrorist fighters (FTFs) departing conflict zones of Iraq and Syria for their countries of origin or other countries. Furthermore, UNSCR 2396 expresses concern that FTFs may use civil aviation both as a means of transportation and as a target, and may use cargo both to target civil aviation and ship materiel. As reinforced by the UN in its 2018 High Level Conference on Counterterrorism, ICAO has a leadership role and must set the tone and ensure global aviation security Standards meet current threats.

1.2 Of urgent concern to combat would-be terrorists and terrorist activities, is the need to elevate the collection, use, processing and protection of PNR data to Standards within Annex 9 to meet the obligations of UNSCR 2396. A similar urgent course of action was taken by ICAO Member States following the adoption of UNSCR 2178 (2014), ultimately resulting in Standard 9.5 of Annex 9 — *Facilitation*, requiring the use of Advance Passenger Information in border screening. Per the recommendations of HLCAS/2 in November 2018, ICAO's established a PNR Task Force in 2019 to work towards accomplishing this goal. The proposals of the PNR Task Force will be considered by the ATC in October 2019. We encourage Member States to accept the ICAO PNR Task Force's recommendations and approve the draft PNR Standards and that it be adopted as soon as possible.

2. PNR SUPPORTS GLOBAL EFFORTS TO DETECT AND DETER TERRORIST TRAVEL

2.1 Physical inspection of a traveler and a travel document is only a small part of border controls applied to passengers arriving by air. Effective border security incorporates analysis of secure electronic data, some of which is provided at the time a passenger buys a ticket and some that becomes known when a passenger boards an aircraft. Passenger identification controls must be applied before the arrival of the passenger in the country of destination, to enable relevant border agencies to perform risk-based assessments of passengers and the goods they are carrying. Analysis of this data can illuminate the hidden connections between known terrorists and their unknown associates.

2.2 The use of PNR has been identified by Member States, the UN and regional organizations as one of the most important tools to detect and deter illicit and terrorist travel. UNSCR 2396 obligates Member States to develop the capability to collect, process, and analyze PNR data and to ensure PNR is used by and shared with all their competent national authorities, with full respect for human rights and fundamental freedoms, for the purpose of preventing, detecting and investigating terrorist offenses and related travel.

2.3 Since 2010, the World Customs Organization (WCO) Contact Committee for WCO/IATA/ICAO Guidelines on Advanced Passenger Information (API) has been working to update the electronic reporting standards for PNR. This work has been essential to defining the parameters of what comprises PNR. Building on this work, the ICAO Facilitation Panel PNR Task Force agreed upon principles which describe how PNR should be used in border and aviation security screening to deter terrorist travel. The implementing guidelines for this Standard(s) will provide additional information on how to implement PNR systems and how to collect and analyze this information.

2.4 The ICAO PNR Task Force has proposed language for PNR Standards, which are in line with UNSCR 2396's goals to deter terrorist travel, which are outlined in the PNR Task Force's Report; however, a few areas remain under consideration, such as the need to include definitions for PNR collection, use, processing, and protection in Annex 9 and ICAO Document 9944. Additionally, conflict of laws for PNR collection, use, processing, and protection and dispute resolution for those conflicts was not fully addressed by the Task Force. The U.S. believes that the following principles should be considered for inclusion into the PNR SARP to address any potential conflict of laws for PNR and to establish clear rules for dispute resolution:

- Contracting States shall not inhibit or prevent the transfer of PNR data by an aircraft operator or other relevant party, nor sanction, impose penalties, or create unreasonable obstacles on aircraft operators that transfer PNR data to another Contracting State which operates a PNR data system aligned with the Standards contained in this section.
- A Contracting State's PNR program shall be deemed to comply with the Standards contained in this section upon that Contracting State's deposit of a certification of compliance with the ICAO Facilitation Panel.

Note 1.— When depositing a certificate of compliance, the self-certifying contracting State should provide documentation describing its compliance for each PNR Standard contained in this section.

- If a Contracting State has substantial doubts or concerns regarding another Contracting State's self-certification of compliance referenced in Standard 9.xx, the States concerned shall first seek to resolve such doubts or concerns through bilateral consultations. If a Contracting State continues to have doubts over whether the other State's PNR program operates consistent with these SARPS, the States concerned shall engage the dispute resolution services of the Permanent Court of Arbitration, The Hague.

3. CAPACITY BUILDING

3.1 UNSCR 2396 specifically encourages improved cooperation between ICAO and the UN Counter-Terrorism Committee Executive Directorate (CTED), in coordination with other relevant UN entities to identify areas where Member States may need technical assistance and capacity building to implement the obligations of this resolution related to PNR and API and watch lists, as well as the implementation of the Global Aviation Security Plan (GASeP). UNSCR 2396 also calls upon Member States, the UN, and other international, regional, and sub-regional entities to provide technical assistance, resources and capacity building to Member States in order to implement such capabilities.

3.2 Advancing PNR use will take time and resources. The United Nations Office of Counter-Terrorism has launched the UN Countering Terrorist Travel Programme, which will be implemented in partnership with the CTED, ICAO, the Office of Information Communication Technology (OICT) and the United Nations Office on Drugs and Crime (UNODC). This programme aims to support Member States' use of travel information to detect, prevent, investigate and prosecute suspected terrorists, while respecting high safeguards for data protection and in compliance with international human rights laws. The United Nations will provide state-of-the-art software – goTravel – capable of analyzing travel data which, based on context-specific risks, will help them to detect and track suspected terrorists and their movements across borders. Prior to providing them with goTravel, the programme will support national authorities to develop the necessary legislative framework and national expertise via training and certification to operationalize it lawfully and effectively.

3.3 Also, the WCO offers its Global Travel Assessment System (GTAS) to Customs authorities looking to implement API and PNR systems.

3.4 Lastly, UNODC's Terrorism Prevention Branch is another resource for guidance on the use of API and PNR, biometrics, and other data for border security, as required under UNSCR 2396.

4. **CONCLUSION**

4.1 ICAO's active participation with the UN on counterterrorism issues signifies its commitment to prioritizing the work of the Security Council and establishing global practices to reduce the threat of terrorism. Developing standards that detect and deter terrorist travel is a tangible demonstration of ICAO's commitment to counter terrorism and fulfilment of its obligations under UNSCR 2396. The Council's approval and expeditious adoption of the PNR Standards and Recommended Practices will enhance the global security community's ability to identify risks, detect and deter terrorism, and prevent acts of unlawful interference.

— END —